

nities, the Committee on Government Reform and Oversight, the Committee on House Oversight, the Committee on Resources, the Committee on Science, and the Committee on Transportation and Infrastructure.

¶79.4 ORDER OF BUSINESS—AMENDMENT  
SUBSTITUTION—H.R. 1530

On motion of Mr. DELLUMS, by unanimous consent,

*Ordered*, That during the further consideration of the bill (H.R. 1530) to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes, pursuant to House Resolution 164, the following amendment is substituted for and is to be considered in lieu of the amendment numbered 2, as printed in subpart D of Part 1 of House Report No. 104-136:

Page 38, line 18, insert "(a) IN GENERAL.—" before "Of the amounts".

Page 38, after line 22, insert the following:

(b) REDUCTION.—The amounts provided in subsection (a) and in section 201(4) are each hereby reduced by \$628,000,000.

(c) NATIONAL MISSILE DEFENSE AMOUNT.—Of the amount provided in subsection (a) (as reduced by subsection (b)), \$371,000,000 is for the National Missile Defense program.

At the end of title IV (page 161, after line 3), insert the following new section:

**SEC. 433. ADDITIONAL MILITARY PERSONNEL AUTHORIZATION.**

There is hereby authorized to be appropriated to the Department of Defense for fiscal year 1996 for military personnel the sum of \$628,000,000. Of the amount appropriated pursuant to such authorization—

(1) \$150,000,000 (or the full amount appropriated, whichever is less) shall be for increased payments for the Variable Housing Allowance program under section 403a of title 37, United States Code, by reason of the amendments made by section 604; and

(2) any remaining amount shall be allocated, in such manner as the Secretary of Defense prescribes, for payments for the Variable Housing Allowance, the Basic Allowance for Quarters, and the Basic Allowance for Subsistence in such a manner as to minimize the need for enlisted personnel to apply for food stamps.

Page 280, beginning on line 19, strike out "beginning after June 30, 1996" and inserting in lieu thereof "after September 1995".

¶79.5 DEFENSE AUTHORIZATION

The SPEAKER pro tempore, Mr. BUNNING, pursuant to House Resolution 164 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 1530) to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes.

Mr. EMERSON, Chairman of the Committee of the Whole, resumed the chair; and after some time spent therein,

¶79.6 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment

submitted by Mrs. COLLINS of Illinois to the amendment, as modified, submitted by Mr. CLINGER:

Amendment submitted by Mrs. COLLINS of Illinois:

Strike out sections 801, 802, 803, and 806 in the matter proposed to be inserted, and insert in lieu of section 801 the following:

**SEC. 801. COMPETITION PROVISIONS.**

(a) CONFERENCE BEFORE SUBMISSION OF BIDS OR PROPOSALS.—(1) Section 2305(a) of title 10, United States Code, is amended by adding at the end the following paragraph:

"(6) To the extent practicable, for each procurement of property or services by an agency, the head of the agency shall provide for a conference on the procurement to be held for anyone interested in submitting a bid or proposal in response to the solicitation for the procurement. The purpose of the conference shall be to inform potential bidders and offerors of the needs of the agency and the qualifications considered necessary by the agency to compete successfully in the procurement."

(2) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended by adding at the end the following new subsection:

"(f) To the extent practicable, for each procurement of property or services by an agency, an executive agency shall provide for a conference on the procurement to be held for anyone interested in submitting a bid or proposal in response to the solicitation for the procurement. The purpose of the conference shall be to inform potential bidders and offerors of the needs of the executive agency and the qualifications considered necessary by the executive agency to compete successfully in the procurement."

(b) DESCRIPTION OF SOURCE SELECTION PLAN IN SOLICITATION.—(1) Section 2305(a) of title 10, United States Code, is further amended in paragraph (2)—

(A) by striking out "and" after the semicolon at the end of subparagraph (A);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new subparagraph:

"(C) a description, in as much detail as is practicable, of the source selection plan of the agency, or a notice that such plan is available upon request."

(2) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is further amended in subsection (b)—

(A) by striking out "and" after the semicolon at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new paragraph:

"(3) a description, in as much detail as is practicable, of the source selection plan of the executive agency, or a notice that such plan is available upon request."

(c) DISCUSSIONS NOT NECESSARY WITH EVERY OFFEROR.—(1) Section 2305(b)(4)(A)(i) of title 10, United States Code, is amended by inserting before the semicolon the following: "and provided that discussions need not be conducted with an offeror merely to permit that offeror to submit a technically acceptable revised proposal".

(2) Section 303B(d)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by inserting before the semicolon the following: "and provided that discussions need not be conducted with an offeror merely to permit that offeror to submit a technically acceptable revised proposal".

(d) PRELIMINARY ASSESSMENTS OF COMPETITIVE PROPOSALS.—(1) Section 2305(b)(2) of title 10, United States Code, is amended by adding at the end the following: "With respect to competitive proposals, the head of the agency may make a preliminary assessment of a proposal received, rather than a complete evaluation of the proposal received, rather than a complete evaluation of the proposal and may eliminate the proposal from further consideration if the head of the agency determines the proposal has no chance for contract award."

(2) Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following: "With respect to competitive proposals, the head of the agency may make a preliminary assessment of a proposal, and may eliminate the proposal from further consideration if the head of the agency determines the proposal has no chance for contract award."

(e) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to reflect the amendments made by subsections (a) < (b), (c), and (d).

Amendment, as modified, submitted by Mr. CLINGER:

After the heading for title VIII (page 323, after line 15), insert the following (and conform the table of contents accordingly):

**Subtitle A—Competition**

**SEC. 801. IMPROVEMENT OF COMPETITION REQUIREMENTS.**

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304 of title 10, United States Code, is amended to read as follows:

**"§ 2304. Contracts: competition requirements**

"(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

"(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Government's requirements in accordance with this chapter and the Federal Acquisition Regulation; and

"(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

"(b) EXCLUSION OF PARTICULAR SOURCE.—The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

"(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

"(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Each procurement using procedures other than competitive procedures (other than a procurement for commercial

items or a procurement in an amount not greater than the simplified acquisition threshold) shall be justified in writing and approved in accordance with the Federal Acquisition Regulation.

“(e) SIMPLIFIED PROCEDURES.—(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

“(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

“(3) In using simplified procedures, the head of an agency shall ensure that competition is obtained to the extent practicable consistent with the particular Government requirement.

“(f) CERTAIN CONTRACTS.—For the purposes of the following laws, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

“(1) The Walsh-Healey Act (41 U.S.C. 35-45).

“(2) The Act entitled “An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes”, approved March 3, 1931 (commonly referred to as the “Davis-Bacon Act”) (40 U.S.C. 276a-276a-5).”.

(2) Chapter 137 of title 10, United States Code, is amended by inserting before section 2305 a new section—

(A) the designation and heading for which is as follows:

**“§ 2304f. Merit-based selection”; and**

(B) the text of which consists of subsection (j) of section 2304 of such title, as in effect on the day before the date of the enactment of this Act, modified—

(i) by striking out the subsection designation and the subsection heading;

(ii) in paragraphs (2)(A), (3), and (4), by striking out “subsection” and inserting in lieu thereof “section” each place it appears;

(iii) in paragraph (2)(C), by striking out “paragraph (1)” and inserting in lieu thereof “subsection (a)”;

(iv) by redesignating paragraphs (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(v) in subsection (b) (as so redesignated), by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(3) The table of sections at the beginning of such chapter is amended by inserting before the item relating section 2305 the following new item:

“2304f. Merit-based selection.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended to read as follows:

**“SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.**

“(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

“(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Government’s requirements in accordance with this chapter and the Federal Acquisition Regulation; and

“(2) shall use the competitive procedure or combination of competitive procedures that

is best suited under the circumstances of the procurement.

“(b) EXCLUSION OF PARTICULAR SOURCE.—An executive agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

“(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 7102 of the Federal Acquisition Streamlining Act of 1994 (15 U.S.C. 644 note).

“(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Each procurement using procedures other than competitive procedures (other than a procurement for commercial items or a procurement in an amount not greater than the simplified acquisition threshold) shall be justified in writing and approved in accordance with the Federal Acquisition Regulation.

“(e) SIMPLIFIED PROCEDURES.—(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

“(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

“(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

“(3) A proposed purchase or contract or for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

“(4) In using simplified procedures, an executive agency shall ensure that competition is obtained to the extent practicable consistent with the particular Government requirement.”.

(2) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303L a new section—

(A) the designation and heading for which is as follows:

**“SEC. 303M. MERIT-BASED SELECTION.”; and**

(B) the text of which consists of subsection (h) of section 303 of such Act, as in effect on the day before the date of the enactment of this Act, modified—

(i) by striking out the subsection designation and the subsection heading;

(ii) in paragraphs (2)(A), (3), and (4), by striking out “subsection” and inserting in lieu thereof “section” each place it appears;

(iii) in paragraph (2)(C), by striking out “paragraph (1)” and inserting in lieu thereof “subsection (a)”;

(iv) by redesignating paragraphs (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(v) in subsection (b) (as so redesignated), by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(3) The table of contents for the Federal Property and Administrative Services Act of 1949 (contained in section 1(b)) is amended—

(A) by striking out the item relating to section 303 and inserting in lieu thereof the following:

“Sec. 303. Contracts: competition requirements.”; and

(B) by inserting after the item relating to section 303L the following new item:

“Sec. 303M. Merit-based selection.”.

(c) REVISIONS TO PROCUREMENT NOTICE PROVISIONS.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended in subsection (b)(4)—

(1) by striking out “all”; and

(2) by striking out “(as appropriate) which shall be considered by the agency”.

(d) REPEAL OF DUPLICATIVE PROVISIONS.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(1) by striking out subsections (e), (f), (g), (h), and (i); and

(2) by redesignating subsection (j) as subsection (e).

(e) EXECUTIVE AGENCY RESPONSIBILITIES.—

(1) Section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) is amended—

(A) by striking out “achieve” in the matter preceding paragraph (1) and inserting in lieu thereof “promote”; and

(B) by amending paragraph (1) to read as follows:

“(1) to implement maximum practicable competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that are consistent with the need to efficiently fulfill the Government’s requirements.”.

(2) Section 20 of such Act (41 U.S.C. 418) is amended in subsection (a)(2)(A) by striking out “serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984”.

**SEC. 802. DEFINITION RELATING TO COMPETITION REQUIREMENTS.**

(a) DEFINITION.—Paragraph (6) of section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended to read as follows:

“(6) The term ‘maximum practicable competition’, when used with respect to a procurement, means that the maximum number of responsible or verified sources, consistent with the particular Government requirement, are permitted to submit sealed bids or competitive proposals on the procurement.”.

(b) CONFORMING AMENDMENTS.—

(1) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act is further amended—

(A) in section 4(5), by striking out “full and open” and inserting “maximum practicable”; and

(B) in section 20, by striking out “full and open” and inserting in lieu thereof “maximum practicable” each place it appears in subsection (b)(1), subsection (b)(3)(A), subsection (b)(4)(C), and subsection (c);

(2) TITLE 10.—Title 10, United States Code, is amended—

(A) in section 2302(2), by striking out “pursuant to full and open competition” and inserting in lieu thereof “using maximum practicable competition”;

(B) in section 2323(e)(3), by striking out "less than full and open" and inserting in lieu thereof "procedures other than"; and

(C) in each of the following sections, by striking out "full and open" and inserting in lieu thereof "maximum practicable":

- (i) Section 2302(3).
- (ii) Section 2305(a)(1)(A)(i).
- (iii) Section 2305(a)(1)(A)(iii).
- (iv) Section 2323(i)(3)(A).

(3) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(A) in section 309(b), by striking out "pursuant to full and open competition" and inserting in lieu thereof "using maximum practicable competition"; and

(B) in each of the following sections, by striking out "full and open" and inserting in lieu thereof "maximum practicable":

- (i) Section 303A(a)(1)(A).
- (ii) Section 303A(a)(1)(C).
- (iii) Section 304B(a)(2)(B).
- (iv) Section 309(c)(4).

(4) OTHER LAWS.—(A) Section 7102 of the Federal Acquisition Streamlining Act of 1994 (108 Stat. 3367; 15 U.S.C. 644 note) is amended in subsection (a)(1)(A) by striking out "less than full and open competition" and inserting in lieu thereof "procedures other than competitive procedures".

(B) Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended in paragraph (1) and in paragraph (2)(A) by striking out "full and open" and inserting in lieu thereof "maximum practicable" each place it appears.

#### SEC. 803. CONTRACT SOLICITATION AMENDMENTS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking out subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B) and in that subparagraph by striking out "subparagraphs (A) and (B)" and inserting in lieu thereof "subparagraph (A)"; and

(2) in subsection (b)(4)(A)(i), by striking out "all" and inserting in lieu thereof "the".

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(A) by striking out paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2) and in that paragraph by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraph (1)".

(2) Section 303B(d)(1)(A) of such Act (41 U.S.C. 253b) is amended by striking out "all" and inserting in lieu thereof "the".

#### SEC. 804. PREAWARD DEBRIEFINGS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305(b) of title 10, United States Code, is amended—

(1) by striking out subparagraph (F) of paragraph (5);

(2) by redesignating paragraph (6) as paragraph (8); and

(3) by inserting after paragraph (5) the following new paragraphs:

"(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable and may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

"(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) of this section only if that offeror requested and was refused a preaward debriefing under subparagraph (A) of this paragraph.

"(C) The debriefing conducted under this subsection shall include—

"(i) the executive agency's evaluation of the significant elements in the offeror's offer;

"(ii) a summary of the rationale for the offeror's exclusion; and

"(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(D) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

"(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file."

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) by striking out paragraph (6) of subsection (e);

(2) by redesignating subsections (f), (g), (h), and (i) as subsections (h), (i), (j), and (k), respectively; and

(3) by inserting after subsection (e) the following new subsections:

"(f)(1) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable and may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

"(2) The contracting officer is required to debrief an excluded offeror in accordance with subsection (e) of this section only if that offeror requested and was refused a preaward debriefing under paragraph (1) of this subsection.

"(3) The debriefing conducted under this subsection shall include—

"(A) the executive agency's evaluation of the significant elements in the offeror's offer;

"(B) a summary of the rationale for the offeror's exclusion; and

"(C) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(4) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

"(g) The contracting officer shall include a summary of the any debriefing conducted under subsection (e) or (f) in the contract file."

#### SEC. 805. CONTRACT TYPES.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2306 of title 10, United States Code, is amended—

(A) by inserting before the period at the end of subsection (a) the following: "based

on market conditions, established commercial practice (if any) for the product or service being acquired, and sound business judgment";

(B) by striking out subsections (b), (d), (e), (f), and (h); and

(C) by redesignating subsection (g) as subsection (b).

(2) The heading of such section is amended to read as follows:

#### "§ 2306. Contract types".

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended—

(A) by inserting before the period at the end of the first sentence of subsection (a) the following: "based on market conditions, established commercial practice (if any) for the product or service being acquired, and sound business judgment"; and

(B) by striking out "Every contract award" in the second sentence of subsection (a) and all that follows through the end of the section.

(2) The heading of such section is amended to read as follows:

#### "SEC. 304. CONTRACT TYPES."

(c) CONFORMING REPEALS.—(1) Sections 4540, 7212, and 9540 of title 10, United States Code, are repealed.

(2) The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4540.

(3) The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7212.

(4) The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9540.

(d) CIVIL WORKS AUTHORITY.—(1) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

#### "§ 2332. Contracts for architectural and engineering services and construction design

"The Secretary of Defense and the Secretaries of the military departments may enter into contracts for architectural and engineering services in connection with a military construction or family housing project or for other Department of Defense or military department purposes. Such contracts shall be awarded in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)."

(2) The table of sections at the beginning of chapter 137 of such title is amended by adding at the end the following new item:

"2332. Contracts for architectural and engineering services and construction design."

(3) Section 2855 of such title is repealed. The table of sections at the beginning of chapter 169 of such title is amended by striking out the item relating to such section.

#### SEC. 806. CONTRACTOR PERFORMANCE.

(a) REQUIREMENT FOR SYSTEM.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

#### "SEC. 35. CONTRACTOR PERFORMANCE.

"(a) VERIFICATION AUTHORIZED.—The Federal Acquisition Regulation shall provide a contractor verification system for the procurement of particular property or services that are procured by executive agencies on a repetitive basis. Under the system, the head of an executive agency—

"(1) shall use competitive procedures to verify contractors as eligible for contracts to furnish such property or services; and

"(2) shall award verifications on the basis of the relative efficiency and effectiveness of the business practices, level of quality, and demonstrated contract performance of the

responding contractors with regard to the particular property or services.

“(b) **PROCUREMENT FROM VERIFIED CONTRACTORS.**—The Federal Acquisition Regulation shall provide procedures under which the head of an executive agency may enter into a contract for a procurement of property or services referred to in subsection (a) on the basis of a competition among contractors verified with respect to such property or services pursuant to that subsection.

“(c) **TERMINATION OF VERIFICATION.**—The Federal Acquisition Regulation shall provide procedures under which the head of an executive agency—

“(1) may provide for the termination of a verification awarded a contractor under this section upon the expiration of a period specified by the head of an executive agency; and

“(2) may revoke a verification awarded a contractor under this section upon a determination that the quality of performance of the contractor does not meet standards applied by the head of the executive agency as of the time of the revocation decision.”.

(b) **REPEALS.**—Section 2319 of title 10, United States Code, is repealed. Section 303C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253c) is repealed.

(c) **CLERICAL AMENDMENTS.**—(1) The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by adding at the end the following new item:

“Sec. 35. Contractor performance.”.

(2) The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by striking out the item relating to section 2319.

(3) The table of contents for the Federal Property and Administrative Services Act of 1949 (contained in section 1(b)) is amended by striking out the item relating to section 303C.

#### Subtitle B—Commercial Items

### SEC. 811. COMMERCIAL ITEM EXCEPTION TO REQUIREMENT FOR COST OR PRICING DATA AND INFORMATION LIMITATIONS.

(a) **ARMED SERVICES ACQUISITIONS.**—(1) Subsections (b), (c), and (d) of section 2306a of title 10, United States Code, are amended to read as follows:

“(b) **EXCEPTIONS.**—

“(1) **IN GENERAL.**—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

“(A) for which the price agreed upon is based on—

“(i) adequate price competition; or

“(ii) prices set by law or regulation;

“(B) for the acquisition of a commercial item; or

“(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

“(2) **MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.**—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception on the submission of cost or pricing data in paragraph (1)(A) or (1)(B), submission of cost or pricing data shall not be required under subsection (a) if—

“(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

“(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the

acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

“(c) **AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.**—

(1) Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

“(2) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

“(3) The head of a procuring activity may not delegate functions under this paragraph.

“(d) **LIMITATIONS ON OTHER INFORMATION.**—The Federal Acquisition Regulation shall include the following:

“(1) Provisions concerning the types of information that contracting officers may consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section, including appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

“(2) Reasonable limitations on requests for sales data relating to commercial items.

“(3) A requirement that a contracting officer shall, to the maximum extent practicable, limit the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

“(4) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.”.

(2) Section 2306a of such title is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(3) Section 2375 of title 10, United States Code, is amended by striking out subsection (c).

(b) **CIVILIAN AGENCY ACQUISITIONS.**—(1) Subsections (b), (c) and (d) of section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b) are amended to read as follows:

“(b) **EXCEPTIONS.**—

“(1) **IN GENERAL.**—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or a modification of a contract or subcontract—

“(A) for which the price agreed upon is based on—

“(i) adequate price competition; or

“(ii) prices set by law or regulation;

“(B) for the acquisition of a commercial item; or

“(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

“(2) **MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.**—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception on the submission of cost or pricing data in paragraph (1)(A) or (1)(B), submission of cost or pricing data shall not be required under subsection (a) if—

“(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

“(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

“(c) **AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.**—

(1) Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

“(2) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

“(3) The head of a procuring activity may not delegate the functions under this paragraph.

“(d) **LIMITATIONS ON OTHER INFORMATION.**—The Federal Acquisition Regulation shall include the following:

“(1) Provisions concerning the types of information that contracting officers may consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section, including appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

“(2) Reasonable limitations on requests for sales data relating to commercial items.

“(3) A requirement that a contracting officer shall, to the maximum extent practicable, limit the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

“(4) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.”.

(2) Section 304A of such Act is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

**SEC. 812. APPLICATION OF SIMPLIFIED PROCEDURES TO COMMERCIAL ITEMS.**

(a) ARMED SERVICES ACQUISITIONS.—Section 2304(e) of title 10, United States Code, as added by section 801(a), is amended—

(1) in paragraph (1), by inserting after “special simplified procedures” the following: “for purchases of commercial items and”; and

(2) by adding at the end the following new paragraph:

“(4) The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items in an amount greater than the simplified acquisition threshold, the head of an agency may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with the Federal Acquisition Regulation.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), as added by section 801(b), is amended—

(1) in paragraph (1), by inserting after “special simplified procedures” the following: “for purchases of commercial items and”; and

(2) by adding at the end the following new paragraph:

“(5) The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items in an amount greater than the simplified acquisition threshold, an executive agency may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with the Federal Acquisition Regulation.”.

(c) SIMPLIFIED NOTICE.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended in subsection (a)(5) (as redesignated by section 801(d))—

(1) by striking out “limited”; and

(2) by inserting before “submission” the following: “issuance of solicitations and the”.

**SEC. 813. AMENDMENT TO DEFINITION OF COMMERCIAL ITEMS.**

Section 4(12)(F) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(F)) is amended by striking out “catalog”.

**SEC. 814. INAPPLICABILITY OF COST ACCOUNTING STANDARDS TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.**

Subparagraph (B) of section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by striking out clause (i) and inserting in lieu thereof the following:

“(i) Contracts or subcontracts for the acquisition of commercial items.”; and

(2) by striking out clause (iii).

**Subtitle C—Additional Reform Provisions**

Redesignate sections 801, 802, 803, 804, 805, 806, 807, and 808 as sections 821, 822, 823, 824, 825, 826, 827, and 828, respectively (and conform the table of contents accordingly).

Add at the end of title VIII (page 329, after line 13) the following (and conform the table of contents accordingly):

**SEC. 829. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.**

(a) GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by inserting after section 16 the following new section:

**“SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.**

“It is the policy of the Federal Government to rely on the private sector to supply the products and services the Federal Government needs.”.

(b) CLERICAL AMENDMENT.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b))

is amended by inserting after the item relating to section 16 the following new item:

“Sec. 17. Government reliance on the private sector.”.

**SEC. 830. ELIMINATION OF CERTAIN CERTIFICATION REQUIREMENTS.**

(a) ELIMINATION OF CERTAIN STATUTORY CERTIFICATION REQUIREMENTS.—(1)(A) Section 2410 of title 10, United States Code, is amended—

(i) in the heading, by striking out “: certification”; and

(ii) in subsection (a)—

(I) in the heading, by striking out “CERTIFICATION”; and

(II) by striking out “unless” and all that follows through “that—” and inserting in lieu thereof “unless—”; and

(III) in paragraph (2), by striking out “to the best of that person’s knowledge and belief”.

(B) The item relating to section 2410 in the table of sections at the beginning of chapter 141 of such title is amended to read as follows:

“Sec. 2410. Requests for equitable adjustment or other relief.”.

(2) Section 2410b of title 10, United States Code, is amended in paragraph (2) by striking out “certification and”.

(3) Section 1352(b)(2) of title 31, United States Code, is amended—

(A) by striking out subparagraph (C); and

(B) by inserting “and” after the semicolon at the end of subparagraph (A).

(4) Section 5152 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) is amended—

(A) in subsection (a)(1), by striking out “has certified to the contracting agency that it will” and inserting in lieu thereof “agrees to”; and

(B) in subsection (a)(2), by striking out “contract includes a certification by the individual” and inserting in lieu thereof “individual agrees”; and

(C) in subsection (b)(1)—

(i) by striking out subparagraph (A);

(ii) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph by striking out “such certification by failing to carry out”; and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(b) ELIMINATION OF CERTAIN REGULATORY CERTIFICATION REQUIREMENTS.—

(1) CURRENT CERTIFICATION REQUIREMENTS.—Not later than 210 days after the date of the enactment of this Act, any certification required of contractors or offerors by the Federal Acquisition Regulation or an executive agency procurement regulation that is not specifically imposed by statute shall be removed by the Administrator for Federal Procurement Policy from the Federal Acquisition Regulation or such agency regulation unless—

(A) written justification for such certification is provided to the Administrator (i) by the Federal Acquisition Regulatory Council (in the case of a certification in the Federal Acquisition Regulation), or (ii) by the head of an executive agency (in the case of a certification in an executive agency procurement regulation); and

(B) the Administrator approves in writing the retention of such certification.

(2) FUTURE CERTIFICATION REQUIREMENTS.—(A) Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is amended—

(i) by amending the heading to read as follows:

“SEC. 22. CONTRACT CLAUSES AND CERTIFICATIONS.”;

(ii) by inserting “(a) NONSTANDARD CONTRACT CLAUSES.—” before “The Federal Acquisition”; and

(iii) by adding at the end the following new subsection:

“(b) PROHIBITION ON CERTIFICATION REQUIREMENTS.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation or an executive agency procurement regulation unless—

“(1) the certification is specifically imposed by statute; or

“(2) written justification for such certification is provided to the Administrator for Federal Procurement Policy (A) by the Federal Acquisition Regulatory Council (in the case of a certification in the Federal Acquisition Regulation), or (B) the head of an executive agency (in the case of a certification in an executive agency procurement regulation), and the Administrator approves in writing the inclusion of such certification.”.

(B) The item relating to section 29 in the table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) (41 U.S.C. 401 note) is amended to read as follows:

“Sec. 29. Contract clauses and certifications.”.

**SEC. 831. AMENDMENT TO COMMENCEMENT AND EXPIRATION OF AUTHORITY TO CONDUCT CERTAIN TESTS OF PROCUREMENT PROCEDURES.**

Subsection (j) of section 5061 of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 413 note) is amended to read as follows:

“(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on August 1, 1995, and shall expire on August 1, 2000. Contracts entered into before such authority expires in an agency pursuant to a test shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.”.

**SEC. 832. PROCUREMENT INTEGRITY.**

(a) AMENDMENT OF PROCUREMENT INTEGRITY PROVISION.—Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended to read as follows:

**“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.**

“(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

“(2) Paragraph (1) applies to any person who—

“(A) is a present or former officer or employee of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

“(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

“(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

“(c) PROHIBITION ON DISCLOSING OR OBTAINING PROCUREMENT INFORMATION IN CONNECTION WITH A PROTEST.—(1) A person shall not, other than as provided by law, knowingly violate the terms of a protective order described in paragraph (2) by disclosing or obtaining contractor bid or proposal information or source selection information related to the procurement contract concerned.

"(2) Paragraph (1) applies to any protective order issued by the the United States Board of Contract Appeals in connection with a protest against the award or proposed award of a Federal agency procurement contract.

"(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

"(1) CRIMINAL PENALTIES.—

"(A) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) shall be imprisoned for not more than one year or fined as provided under title 18, United States Code, or both.

"(B) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) for the purpose of either—

"(i) exchanging the information covered by such subsection for anything of value, or

"(ii) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than 15 years or fined as provided under title 18, United States Code, or both.

"(2) CIVIL PENALTIES.—(A) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), or (c). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

"(3) ADMINISTRATIVE ACTIONS.—(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting an offense under subsection (a), (b), or (c), the Federal agency shall consider taking one or more of the following actions, as appropriate:

"(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

"(ii) Rescission of a contract with respect to which—

"(I) the contractor or someone acting for the contractor has been convicted for an offense under subsection (a), (b), or (c), or

"(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

"(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

"(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code, or other applicable law or regulation.

"(B) If a Federal agency rescinds a contract pursuant to subparagraph (A)(ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

"(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A)(iii), engaging in conduct constituting an offense under subsection (a), (b), or (c) affects the present responsibility of a Government contractor or subcontractor.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'contractor bid or proposal information' means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal

to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Cost or pricing data (as defined by section 2306a(h) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(h) of Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h), with respect to procurements subject to that section).

"(B) Indirect costs and direct labor rates.

"(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

"(D) Information marked by the contractor as 'contractor bid or proposal information', in accordance with applicable law or regulation.

"(2) The term 'source selection information' means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

"(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

"(C) Source selection plans.

"(D) Technical evaluation plans.

"(E) Technical evaluations of proposals.

"(F) Cost or price evaluations of proposals.

"(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

"(H) Rankings of bids, proposals, or competitors.

"(I) The reports and evaluations of source selection panels, boards, or advisory councils.

"(J) Other information marked as 'source selection information' based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

"(3) The term 'Federal agency' has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

"(4) The term 'Federal agency procurement' means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

"(5) The term 'contracting officer' means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

"(6) The term 'protest' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to title IV of the Federal Acquisition Reform Act of 1995.

"(f) LIMITATION ON PROTESTS.—No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging an offense under subsection (a), (b), or (c), of this section, nor may the United States Board of Contract Appeals consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement information that the person believed constituted evidence of the offense no later

than 14 days after the person first discovered the possible offense.

"(g) SAVINGS PROVISIONS.—This section does not—

"(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

"(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

"(4) prohibit individual meetings between a Federal agency employee and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

"(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

"(6) authorize the withholding of information from, nor restrict its receipt by, any board of contract appeals of a Federal agency or the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

"(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation."

(b) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789).

(3) Section 281 of title 18, United States Code.

(4) Subsection (c) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).

(5) The first section 19 of the Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918).

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections at the beginning of chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) Section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) is amended by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

#### SEC. 833. FURTHER ACQUISITION STREAMLINING PROVISIONS.

(a) PURPOSE OF OFFICE OF FEDERAL PROCUREMENT POLICY.—(1) Section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404) is amended to read as follows:

"(a) To promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government, there shall be an Office of Federal Procurement Policy (hereinafter referred to as the 'Office') in the Office of Management and Budget to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies."

(2) Sections 2 and 3 of such Act (41 U.S.C. 401 and 402) are repealed.

(b) **REPEAL OF REPORT REQUIREMENT.**—Section 8 of the Office of Federal Procurement Policy Act (41 U.S.C. 407) is repealed.

(c) **REPEAL OF OBSOLETE PROVISIONS.**—(1) Sections 10 and 11 of the Office of Federal Procurement Policy Act (41 U.S.C. 409 and 410) are repealed.

(d) **CLERICAL AMENDMENTS.**—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by striking out the items relating to sections 2, 3, 8, 10, and 11.

**SEC. 834. JUSTIFICATION OF MAJOR DEFENSE ACQUISITION PROGRAMS NOT MEETING GOALS.**

Section 2220(b) of title 10, United States Code, is amended by adding at the end the following: "In addition, the Secretary shall include in such annual report a justification for the continuation of any program that—

"(1) is more than 50 percent over the cost goal established for the development, procurement, or operational phase of the program;

"(2) fails to achieve at least 50 percent of the performance capability goals established for the development, procurement, or operational phase of the program; or

"(3) is more than 50 percent behind schedule, as determined in accordance with the schedule goal established for the development, procurement, or operational phase of the program."

**SEC. 835. ENHANCED PERFORMANCE INCENTIVES FOR ACQUISITION WORKFORCE.**

(a) **ARMED SERVICES ACQUISITIONS.**—Subsection (b) of section 5001 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3350; 10 U.S.C. 2220 note) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by designating the second sentence as paragraph (2);

(3) by inserting "(1)" after "(b) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—"; and

(4) by adding at the end the following:

"(3) The Secretary shall include in the enhanced system of incentives the following:

"(A) Pay bands.

"(B) Significant and material pay and promotion incentives to be awarded, and significant and material unfavorable personnel actions to be imposed, under the system exclusively, or primarily, on the basis of the contributions of personnel to the performance of the acquisition program in relation to cost goals, performance goals, and schedule goals.

"(C) Provisions for pay incentives and promotion incentives to be awarded under the system."

(b) **CIVILIAN AGENCY ACQUISITIONS.**—Subsection (c) of section 5051 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3351; 41 U.S.C. 263 note) is amended—

(1) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by inserting "(1)" after "(c) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—"; and

(4) by adding at the end the following:

"(2) The Deputy Director shall include in the enhanced system of incentives under paragraph (1)(B) the following:

"(A) Pay bands.

"(B) Significant and material pay and promotion incentives to be awarded, and significant and material unfavorable personnel actions to be imposed, under the system exclusively, or primarily, on the basis of the contributions of personnel to the performance of the acquisition program in relation to cost goals, performance goals, and schedule goals.

"(C) Provisions for pay incentives and promotion incentives to be awarded under the system."

**SEC. 836. RESULTS ORIENTED ACQUISITION PROGRAM CYCLE.**

Section 5002(a) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3350) is amended—

(1) by inserting "(1)" before "to ensure"; and

(2) by striking out the period at the end and inserting in lieu thereof the following: "; (2) to ensure that the regulations compress the time periods associated with developing, procuring, and making operational new systems; and (3) to ensure that Department of Defense directives relating to development and procurement of information systems (numbered in the 8000 series) and the Department of Defense directives numbered in the 5000 series are consolidated into one series of directives that is consistent with such compressed time periods."

**SEC. 837. RAPID CONTRACTING GOAL.**

(a) **GOAL.**—The Office of Federal Procurement Policy Act is amended by adding at the end the following new section:

**"SEC. 35. RAPID CONTRACTING GOAL.**

The Administrator for Federal Procurement Policy shall establish a goal of reducing by 50 percent the time necessary for executive agencies to acquire an item for the user of that item."

(b) **CLERICAL AMENDMENT.**—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

"Sec. 35. Rapid contracting goal."

**SEC. 838. ENCOURAGEMENT OF MULTIYEAR CONTRACTING.**

(a) **ARMED SERVICES ACQUISITIONS.**—Section 2306b(a) of title 10, United States Code, is amended in the matter preceding paragraph (1) by striking out "may" and inserting in lieu thereof "shall, to the maximum extent possible,".

(b) **CIVILIAN AGENCY ACQUISITIONS.**—Section 304B(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(a)) is amended in the matter preceding paragraph (1) by striking out "may" and inserting in lieu thereof "shall, to the maximum extent possible,".

**SEC. 839. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.**

(a) **ARMED SERVICES ACQUISITIONS.**—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2306b the following new section:

**"§ 2306c. Contractor share of gains and losses from cost, schedule, and performance experience**

"The Federal Acquisition Regulation shall contain provisions to ensure that, for any cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States."

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2306b the following new item:

"2306c. Contractor share of gains and losses from cost, schedule, and performance experience."

(b) **CIVILIAN AGENCY ACQUISITIONS.**—(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 304C the following new section:

**"SEC. 304D. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.**

"The Federal Acquisition Regulation shall contain provisions to ensure that, for any

cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States."

(2) The table of contents for such Act, contained in section 1(b), is amended by inserting after the item relating to section 304C the following new item:

"Sec. 304D. Contractor share of gains and losses from cost, schedule, and performance experience."

**SEC. 840. PHASE FUNDING OF DEFENSE ACQUISITION PROGRAMS.**

Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 2221. Funding for results oriented acquisition program cycle**

"Before initial funding is made available for the development, procurement, or operational phase of an acquisition program for which an authorization of appropriations is required by section 114 of this title, the Secretary of Defense shall submit to Congress information about the objectives and plans for the conduct of that phase and the funding requirements for the entire phase. The information shall identify the intended user of the system to be acquired under the program and shall include objective, quantifiable criteria for assessing the extent to which the objectives and goals determined pursuant to section 2435 of this title are achieved."

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2221. Funding for results oriented acquisition program cycle."

**SEC. 841. IMPROVED DEPARTMENT OF DEFENSE CONTRACT PAYMENT PROCEDURES.**

(a) **REVIEW AND IMPROVEMENT OF PROCEDURES.**—The Comptroller General of the United States shall review commercial practices regarding accounts payable and, considering the results of the review, develop standards for the Secretary of Defense to consider using for improving the contract payment procedures and financial management systems of the Department of Defense.

(b) **GAO REPORT.**—Not later than September 30, 1996, the Comptroller General shall submit to Congress a report containing the following matters:

(1) The weaknesses in the financial management processes of the Department of Defense.

(2) Deviations of the Department of Defense payment procedures and financial management systems from the standards developed pursuant to subsection (a), expressed quantitatively.

(3) The officials of the Department of Defense who are responsible for resolving the deviations.

**SEC. 842. CONSIDERATION OF PAST PERFORMANCE IN ASSIGNMENT TO ACQUISITION POSITIONS.**

(a) **REQUIREMENT.**—Section 1701(a) of title 10, United States Code, is amended by adding at the end the following: "The policies and procedures shall provide that education and training in acquisition matters, and past performance of acquisition responsibilities, are major factors in the selection of personnel for assignment to acquisition positions in the Department of Defense."

(b) **PERFORMANCE REQUIREMENTS FOR ASSIGNMENT.**—(1) Section 1723(a) of title 10, United States Code, is amended by inserting ", including requirements relating to demonstrated past performance of acquisition



duties," in the first sentence after "experience requirements".

(2) Section 1724(a)(2) of such title is amended by inserting before the semicolon at the end the following: "and have demonstrated proficiency in the performance of acquisition duties in the contracting position or positions previously held".

(3) Section 1735 of such title is amended—  
(A) in subsection (b)—

(i) by striking out "and" at the end of paragraph (2);

(ii) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(iii) by adding at the end the following:

"(4) must have demonstrated proficiency in the performance of acquisition duties.";

(B) in subsection (c)—

(i) by striking out "and" at the end of paragraph (2);

(ii) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(iii) by adding at the end the following:

"(4) must have demonstrated proficiency in the performance of acquisition duties.";

(C) in subsection (d), by inserting before the period at the end the following: "; and have demonstrated proficiency in the performance of acquisition duties"; and

(D) in subsection (e), by inserting before the period at the end the following: "; and have demonstrated proficiency in the performance of acquisition duties".

#### **SEC. 843. VALUE ENGINEERING FOR FEDERAL AGENCIES.**

(a) USE OF VALUE ENGINEERING.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 837, is further amended by adding at the end the following new section:

##### **"SEC. 37. VALUE ENGINEERING.**

"(a) IN GENERAL.—Each executive agency shall establish and maintain effective value engineering procedures and processes.

"(b) THRESHOLD.—The procedures and processes established pursuant to subsection (a) shall be applied to those programs, projects, systems, and products of an executive agency that, in a ranking of all programs, projects, systems, and products of the agency according to greatest dollar value, are within the highest 20th percentile.

"(c) DEFINITION.—As used in this section, the term 'value engineering' means a team effort, performed by qualified agency or contractor personnel, directed at analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply for the purpose of achieving the essential functions at the lowest life-cycle cost that is consistent with required or improved performance, reliability, quality, and safety."

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

"Sec. 37. Value engineering."

##### **SEC. 844. ACQUISITION WORKFORCE.**

(a) ACQUISITION WORKFORCE.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 843, is further amended by adding at the end the following new section:

##### **"SEC. 38. ACQUISITION WORKFORCE.**

"(a) APPLICABILITY.—This section does not apply to an executive agency that is subject to chapter 87 of title 10, United States Code.

"(b) MANAGEMENT POLICIES.—

"(1) POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, ca-

reer development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of title 5, United States Code.

"(2) UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

"(3) GOVERNMENTWIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

"(c) SENIOR PROCUREMENT EXECUTIVE AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

"(d) MANAGEMENT INFORMATION SYSTEMS.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards established by the Office of Personnel Management for the Central Personnel Data File.

"(e) ACQUISITION WORKFORCE.—The programs established by this section shall apply to all employees in the General Schedule Contracting series (GS-1102) and the General Schedule Purchasing series (GS-1105), and to any employees regardless of series who have been appointed as contracting officers whose authority exceeds the micro-purchase threshold, as that term is defined in section 32(g). The head of each executive agency may include employees in other series who perform acquisition or acquisition-related functions.

"(f) CAREER DEVELOPMENT.—

"(1) CAREER PATHS.—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

"(2) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

"(3) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

"(4) PERFORMANCE INCENTIVES.—The head of each executive agency, acting through the senior procurement executive for the agency, shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

"(A) relate pay to performance;

"(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel contributed to achieving the agency's performance goals; and

"(C) provide pay and promotion incentives to be awarded, and unfavorable personnel actions to be imposed, under the system on the basis of the contributions of personnel to achieving the agency's performance goals.

"(g) QUALIFICATION REQUIREMENTS.—

"(1) GENERAL SCHEDULE CONTRACTING SERIES (GS-1102).—

"(A) ENTRY LEVEL QUALIFICATIONS.—The Director of the Office of Personnel Management shall require that, after October 1, 1996, a person may not be appointed to a position in the GS-1102 occupational series unless the person—

"(i) has received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees,

"(ii) has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management, or

"(iii) has passed a written test determined by the Administrator for Federal Procurement Policy, after consultation with the Director of the Office of Personnel Management, to demonstrate the judgmental skills necessary for positions in this series.

"(B) QUALIFICATIONS FOR SENIOR CONTRACTING POSITIONS.—The Director of the Office of Personnel Management shall require that, after October 1, 1996, persons may be appointed to positions at and above full performance grade levels in the GS-1102 occupational series only if those persons—

"(i) have satisfied the educational requirement either of subsection (g)(1)(A)(i) or subsection (g)(1)(A)(ii),

"(ii) have successfully completed all training required for the position under subsection (f)(3), and

"(iii) have satisfied experience and other requirements established by the Director for such positions.

However, this requirement shall apply to persons employed on October 1, 1996, in GS-1102 positions at those grade levels only as a prerequisite for promotion to a GS-1102 position at a higher grade.

"(2) GENERAL SCHEDULE PURCHASING SERIES (GS-1105).—The Director of the Office of Personnel Management shall require that, after October 1, 1996, a person may not be appointed to a position in the GS-1105 occupational series unless the person—



"(A) has successfully completed 2 years of course work from an accredited educational institution authorized to grant degrees, or

"(B) has passed a written test determined by the Administrator for Federal Procurement Policy, after consultation with the Director of the Office of Personnel Management, to demonstrate the judgmental skills necessary for positions in this series.

"(3) CONTRACTING OFFICERS.—The head of each executive agency shall require that, beginning after October 1, 1996, a person may be appointed as a contracting officer with authority to award or administer contracts for amounts above the micro-purchase threshold, as that term is defined in section 32(g), only if the person—

"(A) has successfully completed all mandatory training required of an employee in an equivalent GS-1102 or 1105 position under subsection (f)(3); and

"(B) meets experience and other requirements established by the head of the agency, based on the dollar value and complexity of the contracts that the employee will be authorized to award or administer under the appointment as a contracting officer.

"(4) EXCEPTIONS.—(A) The requirements set forth in subsection (g)(1) and (2), as applicable, shall not apply to any person employed in the GS-1101 or GS-1105 series on October 1, 1996.

"(B) Employees of an executive agency who do not satisfy the full qualification requirements for appointment as a contracting officer under subsection (g)(3) may be appointed as a contracting officer for a temporary period of time under procedures established by the agency head. The procedures shall—

"(i) require that the person have completed a significant portion of the required training,

"(ii) require a plan be established for the balance of the required training,

"(iii) specify a period of time for completion of the training, and

"(iv) include provisions for withdrawing or terminating the appointment prior to the scheduled expiration date, where appropriate.

"(5) WAIVER.—The senior procurement executive for an executive agency may waive any or all of the qualification requirements of subsections (g)(1) and (2) for a person if the person possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. This authority may not be redelegated by the senior procurement executive. With respect to each waiver granted under this subsection, the senior procurement executive shall set forth in writing the rationale for the decision to waive such requirements.

"(h) PROGRAM ESTABLISHMENT AND IMPLEMENTATION.—

"(1) FUNDING LEVELS.—(A) The head of an executive agency shall request in the budget for a fiscal year for the agency—

"(i) for education and training under this section, an amount equal to no less than 2.5 percent of the base aggregate salary cost of the acquisition workforce subject to this section for that fiscal year; and

"(ii) for salaries of the acquisition workforce, an amount equal to no more than 97.5 percent of such base aggregate salary cost.

"(B) The head of the executive agency shall set forth separately the funding levels requested in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code.

"(C) Funds appropriated for education and training under this section may not be obligated or used for any other purpose.

"(2) INTERAGENCY AGREEMENTS.—The head of an executive agency may enter into a

written agreement with another agency to participate in programs established under this section on a reimbursable basis.

"(3) TUITION ASSISTANCE.—Notwithstanding the prohibition in section 4107(b) of title 5, United States Code, the head of each executive agency may provide for tuition reimbursement and education (including a full-time course of study leading to a degree) for acquisition personnel in the agency related to the purposes of this section.

"(4) INTERN PROGRAMS.—The head of each executive agency may establish intern programs in order to recruit highly qualified and talented individuals and provide them with opportunities for accelerated promotions, career broadening assignments, and specified training for advancement to senior acquisition positions. For such programs, the head of an executive agency, without regard to the provisions of title 5, United States Code, may appoint individuals to competitive GS-5, GS-7, or GS-9 positions in the General Schedule Contracting series (GS-1102) who have graduated from baccalaureate or master's programs in purchasing or contracting from accredited educational institutions authorized to grant baccalaureate and master's degrees.

"(5) COOPERATIVE EDUCATION PROGRAM.—The head of each executive agency may establish an agencywide cooperative education credit program for acquisition positions. Under the program, the head of the executive agency may enter into cooperative arrangements with one or more accredited institutions of higher education which provide for such institutions to grant undergraduate credit for work performed in such position.

"(6) SCHOLARSHIP PROGRAM.—

"(A) ESTABLISHMENT.—Where deemed appropriate, the head of each executive agency may establish a scholarship program for the purpose of qualifying individuals for acquisition positions in the agency.

"(B) ELIGIBILITY.—To be eligible to participate in a scholarship program established under this paragraph by an executive agency, an individual must—

"(i) be accepted for enrollment or be currently enrolled as a full-time student at an accredited educational institution authorized to grant baccalaureate or graduate degrees (as appropriate);

"(ii) be pursuing a course of education that leads toward completion of a bachelor's, master's, or doctor's degree (as appropriate) in a qualifying field of study, as determined by the head of the agency;

"(iii) sign an agreement described in subparagraph (C) under which the participant agrees to serve a period of obligated service in the agency in an acquisition position in return for payment of educational assistance as provided in the agreement; and

"(iv) meet such other requirements as the head of the agency prescribes.

"(C) AGREEMENT.—An agreement between the head of an executive agency and a participant in a scholarship program established under this paragraph shall be in writing, shall be signed by the participant, and shall include the following provisions:

"(i) The agreement of the head of the agency to provide the participant with educational assistance for a specified number of school years, not to exceed 4, during which the participant is pursuing a course of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

"(ii) The participant's agreement—

"(I) to accept such educational assistance,

"(II) to maintain enrollment and attendance in the course of education until completed,

"(III) while enrolled in such course, to maintain an acceptable level of academic

standing (as prescribed by the head of the agency), and

"(IV) after completion of the course of education, to serve as a full-time employee in an acquisition position in the agency for a period of time of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the program.

"(D) REPAYMENT.—(i) Any person participating in a program established under this paragraph shall agree to pay to the United States the total amount of educational assistance provided to the person under the program if the person is voluntarily separated from the agency or involuntarily separated for cause from the agency before the end of the period for which the person has agreed to continue in the service of the agency in an acquisition position.

"(ii) If an employee fails to fulfill the agreement to pay to the Government the total amount of educational assistance provided to the person under the program, a sum equal to the amount of the educational assistance may be recovered by the Government from the employee (or the estate of the employee) by setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and by such other method as is provided by law for the recovery of amounts owing to the Government.

"(iii) The head of an executive agency may waive in whole or in part a repayment required under this paragraph if the head of the agency determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

"(E) TERMINATION OF AGREEMENT.—There shall be no requirement that a position be offered to a person after such person successfully completes a course of education required by an agreement under this paragraph. If no position is offered, the agreement shall be considered terminated."

(2) The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

"Sec. 38. Acquisition workforce."

(b) FEDERAL ACQUISITION INSTITUTE.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), is amended—

(1) in subsection (d) by amending paragraph (5) to read as follows:

"(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration;"; and

(2) by adding at the end the following new subsection:

"(1) The Federal Acquisition Institute shall—

"(1) recommend policies, procedures, and guidelines to the Administrator, for—

"(A) fostering and promoting the development of a professional acquisition workforce governmentwide, and

"(B) administering the provisions of section 35;

"(2) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;

"(3) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

"(4) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

"(5) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

"(6) evaluate the effectiveness of training and career development programs for acquisition personnel;

"(7) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

"(8) promote, coordinate, or conduct governmentwide research and studies to improve the acquisition process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

"(9) facilitate, to the extent requested by agencies, interagency intern and training programs; and

"(10) perform other career management or research functions as directed by the Administrator."

(c) **REPEAL OF SUPERSEDED PROVISION.**—Section 502 of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (41 U.S.C. 414a) is repealed.

#### **Subtitle D—Streamlining of Dispute Resolution**

##### **PART I—GENERAL PROVISIONS**

##### **SEC. 850. DEFINITIONS.**

In this subtitle:

(1) The term "Board" means the United States Board of Contract Appeals.

(2) The term "Board judge" means a member of the United States Board of Contract Appeals.

(3) The term "Chairman" means the Chairman of the United States Board of Contract Appeals.

(4) The term "executive agency" has the meaning given by section 2(2) of the Contract Disputes Act of 1978 (41 U.S.C. 601(2)).

(5) The term "alternative means of dispute resolution" has the meaning given by section 571(3) of title 5, United States Code.

(6) The term "protest" means a written objection by an interested party to any of the following:

(A) A solicitation or other request by an executive agency for offers for a contract for the procurement of property or services.

(B) The cancellation of such a solicitation or other request.

(C) An award or proposed award of such a contract.

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(7) The term "interested party", with respect to a contract or a solicitation or other request for offers, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

(8) The term "prevailing party", with respect to a determination of the Board under section 864(b) that a decision of a contracting officer violates a statute or regulation, means a party that demonstrated such violation.

##### **PART II—ESTABLISHMENT OF THE UNITED STATES BOARD OF CONTRACT APPEALS**

##### **SEC. 851. ESTABLISHMENT.**

There is established in the executive branch of the Government an independent establishment to be known as the United States Board of Contract Appeals.

##### **SEC. 852. MEMBERSHIP.**

(a) **APPOINTMENT.**—(1) The Board shall consist of Board judges appointed by the Chairman, without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Board judge, from a register of applicants maintained by the Board.

(2) The members of the Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, United States Code, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law.

(3) Notwithstanding paragraph (2) and subject to subsection (b), the following persons shall serve as Board judges:

(A) Any full-time member of an agency board of contract appeals serving as such on the day before the effective date of this subtitle.

(B) Any person serving on the day before the date of the enactment of this Act in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code.

(b) **REMOVAL.**—Members of the Board shall be subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5, United States Code.

(c) **COMPENSATION.**—Compensation for the Chairman and all other members of the Board shall be determined under section 5273a of title 5, United States Code.

##### **SEC. 853. CHAIRMAN.**

(a) **DESIGNATION.**—(1) The Chairman shall be designated by the President to serve for a term of five years. The President shall select the Chairman from among sitting Board judges each of whom has had at least five years of service—

(A) as a member of an agency board of contract appeals; or

(B) in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date of this subtitle).

(2) A Chairman may continue to serve after the expiration of the Chairman's term until a successor has taken office. A Chairman may be reappointed any number of times.

(b) **RESPONSIBILITIES.**—The Chairman shall be responsible on behalf of the Board for the executive and administrative operation of the Board, including functions of the Board with respect to the following:

(1) The selection, appointment, and fixing of the compensation of such personnel, pursuant to part III of title 5, United States Code, as the Chairman considers necessary or appropriate, including a Clerk of the Board, a General Counsel, and clerical and legal assistance for Board judges.

(2) The supervision of personnel employed by or assigned to the Board, and the distribution of work among such personnel.

(3) The response to any request that may be made by Congress or the Office of Management and Budget.

(4) The allocation of funds among the various functions of the Board.

(5) The entering into and performance of such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and the making of such payments, as the Chairman considers necessary or appropriate to carry out functions vested in the Board.

(6) The operation of an Office of the Clerk of the Board, including the receipt of all filings made with the Board, the assignment of cases, and the maintenance of all records of the Board.

(7) The acquisition, operation, and maintenance of such automatic data processing resources as may be needed by the Board.

(8) The prescription of such rules and regulations as the Chairman considers necessary

or appropriate for the administration and management of the Board.

(c) **VICE CHAIRMEN.**—The Chairman may designate up to four other Board judges as Vice Chairmen. The Chairman may divide the Board into two or more divisions, and, if such division is made, shall assign a Vice Chairman to head each division. The Vice Chairmen, in the order designated by the Chairman, shall act in the place and stead of the Chairman during the absence of the Chairman.

##### **SEC. 854. RULEMAKING AUTHORITY.**

(a) **IN GENERAL.**—The Board may establish—

(1) such procedural rules and regulations as are necessary to the exercise of its functions, including internal rules for the assignment of cases; and

(2) statements of policy of general applicability with respect to its functions.

(b) **PROHIBITION ON REVIEW BY OTHER AGENCY OR PERSON.**—Rules and regulations established by the Board (including forms which are a part thereof) shall not be subject to review by any other agency or person (including the Administrator of Information and Regulatory Affairs, pursuant to chapter 35 of title 44, United States Code) in advance of publication.

##### **SEC. 855. LITIGATION AUTHORITY.**

Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board.

##### **SEC. 856. SEAL OF BOARD.**

The Chairman shall cause a seal of office to be made for the Board of such design as the Board shall approve. Judicial notice shall be taken of such seal.

##### **SEC. 857. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for fiscal year 1997 and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this subtitle and to enable the Board to perform its functions. Funds appropriate pursuant to this section shall remain available until expended.

##### **PART III—FUNCTIONS OF UNITED STATES BOARD OF CONTRACT APPEALS**

##### **SEC. 861. ALTERNATIVE DISPUTE RESOLUTION SERVICES.**

(a) **REQUIREMENT TO PROVIDE SERVICES UPON REQUEST.**—The Board shall provide alternative means of dispute resolution for any disagreement regarding a contract or prospective contract of an executive agency upon the request of all parties to the disagreement.

(b) **PERSONNEL QUALIFIED TO ACT.**—Each Board judge and each attorney employed by the Board shall be considered to be qualified to act for the purpose of conducting alternative means of dispute resolution under this section.

(c) **SERVICES TO BE PROVIDED WITHOUT CHARGE.**—Any services provided by the Board or any Board judge or employee pursuant to this section shall be provided without charge.

(d) **RECUSAL OF CERTAIN PERSONNEL UPON REQUEST.**—In the event that a matter which is presented to the Board for alternative means of dispute resolution, pursuant to this section, later becomes the subject of formal proceedings before the Board, any Board judge or employee who was involved in the alternative means shall, if requested by any party to the formal proceeding, take no part in that proceeding.

##### **SEC. 862. ALTERNATIVE DISPUTE RESOLUTION OF DISPUTES AND PROTESTS SUBMITTED TO BOARD.**

With reasonable promptness after the submission to the Board of a contract dispute

under section 863 or a bid protest under section 864, a Board judge to whom the contract dispute or protest is assigned shall request the parties to meet with a Board judge, or an attorney employed by the Board, for the purpose of attempting to resolve the dispute or protest through alternative means of dispute resolution. Formal proceedings in the appeal shall then be suspended until such time as any party or a Board judge to whom the dispute or protest is assigned determines that alternative means of dispute resolution are not appropriate for resolution of the dispute or protest.

#### SEC. 863. CONTRACT DISPUTES.

The Board shall have jurisdiction as provided by section 8(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

#### SEC. 864. PROTESTS.

(a) **REVIEW REQUIRED UPON REQUEST.**—Upon request of an interested party in connection with any procurement conducted by any executive agency, the Board shall review, as provided in this section, any decision by a contracting officer alleged to violate a statute or regulation. The authority of the Board to conduct such review shall include the authority to review regulations to determine their consistency with applicable statutes. A decision or order of the Board pursuant to this section shall not be subject to interlocutory appeal or review.

(b) **STANDARD OF REVIEW.**—In deciding a protest, the Board may consider all evidence that is relevant to the decision under protest. It shall accord a presumption of correctness to all facts found and determinations made by the contracting officer whose decision is being protested. The protester may rebut this presumption by showing, by a preponderance of the evidence, that a finding or determination was incorrect. The Board may find that a decision by a contracting officer violates a statute or regulation for any of the reasons stated in section 706(2) of title 5, United States Code.

(c) **DETERMINATION OF WHETHER TO SUSPEND AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST FILED BEFORE CONTRACT AWARD.**—(1) When a protest under this section is filed before the award of a contract in a protested procurement, the Board, at the request of an interested party and within 10 days after the submission of the protest, shall hold a hearing to determine whether the Board should suspend the authority of the executive agency involved (or its head) to conduct such procurement until the Board can decide the protest.

(2) The Board shall suspend the authority of the executive agency (or its head) unless the agency concerned establishes that—

(A) absent action by the Board, contract award is likely to occur within 30 days after the hearing; and

(B) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

(3) A suspension under paragraph (2) shall not preclude the executive agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines such action is not in the best interests of the United States.

(d) **DETERMINATION OF WHETHER TO SUSPEND AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST FILED AFTER CONTRACT AWARD.**—

(1) If, with respect to an award of a contract, the Board receives notice of a protest under this section within the period described in paragraph (2), the Board shall, at the request of an interested party, hold a hearing to determine whether the Board should suspend the authority of the executive agency involved (or its head) to conduct such procurement until the Board can decide the protest.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the contract is awarded and ending at the end of the later of—

(A) the tenth day after the date of contract award; or

(B) the fifth day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.

(3) The Board shall hold the requested hearing within 5 days after the date of the filing of the protest or, in the case of a request for debriefing, within 5 days after the later of the date of the filing of the protest or the date of the debriefing.

(4) The Board shall suspend the procurement authority of the executive agency involved (or its head) to acquire any goods or services under the contract which are not previously delivered and accepted unless such agency establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

(e) **PROCEDURES.**—

(1) **PROCEEDINGS AND DISCOVERY.**—The Board shall conduct proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest. The Board shall limit discovery to material which is relevant to the grounds of protest or to such affirmative defenses as the executive agency involved, or any intervenor supporting the agency, may raise.

(2) **PRIORITY.**—The Board shall give priority to protests filed under this section over contract disputes and alternative dispute services. Except as provided in paragraph (3), the Board shall issue its final decision within 65 days after the date of the filing of the protest, unless the Chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the Board shall issue such decision within the longer period determined by the Chairman. An amendment that adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.

(3) **THRESHOLD.**—Any protest in which the anticipated value of the contract award that will result from the protested procurement, as estimated by the executive agency involved, is less than \$1,000,000 shall be considered under simplified rules of procedure. These rules shall provide that discovery in such protests shall be in writing only. Such protests shall be decided by a single Board judge, whose decision shall be final and conclusive and shall not be set aside except in cases of fraud. The Board shall issue its final decision in each such protest within 35 days after the date of the filing of the protest.

(4) **CALCULATION OF TIME FOR ADR.**—In calculating time for purposes of paragraph (2) or (3) of this subsection, any days during which proceedings are suspended for the purpose of attempting to resolve the protest by alternative means of dispute resolution, up to a maximum of 20 days, shall not be counted.

(5) **DISMISSAL OF FRIVOLOUS PROTESTS.**—The Board may dismiss a protest that the Board determines is frivolous or which, on its face, does not state a valid basis for protest.

(6) **PAYMENT OF COSTS FOR FRIVOLOUS PROTESTS.**—(A) If the Board expressly finds that a protest or a portion of a protest is frivolous or does not state on its face a valid basis for protest, the Board shall declare that the protester or other interested party who joins the protest is liable to the United States for payment of the costs described in subparagraph (B) unless—

(i) special circumstances would make such payment unjust; or

(ii) the protester obtains documents or other information after the protest is filed with the Board that establishes that the protest or a portion of the protest is frivolous or does not state on its face a valid basis for protest, and the protester then promptly withdraws the protest or portion of the protest.

(B) The costs referred to in subparagraph (A) are all of the costs incurred by the United States of reviewing the protest, or of reviewing that portion of the protest for which the finding is made, including the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28, United States Code) incurred by the United States in defending the protest.

(f) **DECISIONS AND CORRECTIVE ACTIONS ON PROTESTS.**—(1) In making a decision on protests filed under this section, the Board shall accord due weight to the goals of economic and efficient procurement, and shall take due account of the rule of prejudicial error.

(2) If the Board determines that a decision of a contracting officer violates a statute or regulation, the Board may order the agency (or its head) to take such corrective action as the Board considers appropriate. Corrective action includes requiring that the Federal agency—

(A) refrain from exercising any of its options under the contract;

(B) recompute the contract immediately;

(C) issue a new solicitation;

(D) terminate the contract;

(E) award a contract consistent with the requirements of such statute and regulation;

(F) implement any combination of requirements under subparagraphs (A), (B), (C), (D), and (E); or

(G) implement such other actions as the Board determines necessary.

(3) If the Board orders corrective action after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the corrective action was ordered.

(4) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and shall be made a part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest.

(g) **AUTHORITY TO DECLARE ENTITLEMENT TO COSTS.**—(1)(A) Whenever the Board determines that a decision of a contracting officer violates a statute or regulation, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the costs of—

(i) filing and pursuing the protest, including reasonable attorneys' fees and consultant and expert witness fees, and

(ii) bid and proposal preparation.

(B) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be declared entitled under this paragraph to costs for—

(i) consultants and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government, or

(ii) attorneys' fees that exceed \$150 per hour unless the Board, on a case by case basis, determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(2) Payment of amounts due from an agency under paragraph (1) or under the terms of a settlement agreement under subsection (e)(4) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The executive agency concerned shall reim-

burse that appropriation account out of funds available for the procurement.

(h) **APPEALS.**—Except as provided in subsection (e)(3), a final decision of the Board may be appealed as set forth in section 8(d)(1) of the Contract Disputes Act of 1978 by the head of the executive agency concerned and by any interested party, including interested parties who intervene in any protest filed under this section.

(i) **ADDITIONAL RELIEF.**—Nothing contained in this section shall affect the power of the Board to order any additional relief which it is authorized to provide under any statute or regulation.

(j) **NONEXCLUSIVITY OF REMEDIES.**—Nothing contained in this section shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims or in a United States district court.

#### **SEC. 865. APPLICABILITY TO CONTRACTS FOR COMMERCIAL ITEMS.**

Notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), the authority conferred on the Board by this subtitle is applicable to contracts for the procurement of commercial items.

### **PART IV—REPEAL OF OTHER STATUTES AUTHORIZING ADMINISTRATIVE PROTESTS**

#### **SEC. 871. REPEALS.**

(a) **GSBCA PROVISIONS.**—Subsection (f) of the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949; 40 U.S.C. 759) is repealed.

(b) **GAO PROVISIONS.**—Subchapter V of chapter 35 of title 31, United States Code (31 U.S.C. 3551-3556) is repealed.

### **PART V—TRANSFERS AND TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS**

#### **SEC. 881. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.**

(a) **TRANSFER.**—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the Comptroller General pursuant to subchapter V of chapter 35 of title 31, United States Code, and in the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date of this Act), shall be transferred to the Board for appropriate allocation by the Chairman.

(b) **EFFECT ON PERSONNEL.**—Personnel transferred pursuant to this subtitle shall not be separated or reduced in compensation for one year after such transfer, except for cause.

(c) **REGULATIONS.**—(1) The Board shall prescribe regulations for the release of competing employees in a reduction in force that gives due effect to—

- (A) efficiency or performance ratings;
- (B) military preference; and
- (C) tenure of employment.

(2) In prescribing the regulations, the Board shall provide for military preference in the same manner as set forth in subchapter I of chapter 35 of title 5, United States Code.

#### **SEC. 882. TERMINATIONS AND SAVINGS PROVISIONS.**

(a) **TERMINATION OF BOARDS OF CONTRACT APPEALS.**—On the effective date of this subtitle, the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date of this Act) shall terminate.

(b) **SAVINGS PROVISION FOR CONTRACT DISPUTE MATTERS PENDING BEFORE BOARDS.**—

The provisions of this subtitle shall not affect any proceedings (other than bid protests pending before the board of contract appeals of the General Services Administration) pending on the effective date of this Act before any board of contract appeals described in subsection (a). Such proceedings shall be continued by the Board, and orders which were issued in any such proceeding by any board of contract appeals shall continue in effect until modified, terminated, superseded, or revoked by the Board, by a court of competent jurisdiction, or by operation of law.

(c) **BID PROTEST TRANSITION PROVISIONS.**—(1) No protest may be submitted to the Comptroller General pursuant to section 3553(a) of title 31, United States Code, or to the board of contract appeals for the General Services Administration pursuant to the Brooks Automatic Data Processing Act (40 U.S.C. 759) on or after the effective date of this Act.

(2) The provisions repealed by section 871 shall continue to apply to proceedings pending on the effective date of this subtitle before the board of contract appeals of the General Services Administration and the Comptroller General pursuant to those provisions, until the board or the Comptroller General determines such proceedings have been completed.

#### **SEC. 883. CONTRACT DISPUTE AUTHORITY OF BOARD.**

(a) Section 2 of the Contract Disputes Act of 1978 (41 U.S.C. 601) is amended by striking out paragraph (6) and inserting in lieu thereof the following:

“(6) the term ‘Board’ means the United States Board of Contract Appeals; and”.

(b) Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended—

(1) in paragraph (4)—  
(A) by striking out “the agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(B) by striking out “the board” and inserting in lieu thereof “the Board”; and

(2) in paragraph (6)—  
(A) by striking out “an agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(B) by striking out “agency board” and inserting in lieu thereof “the Board”.

(c) Section 7 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by striking out “an agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”.

(d) Section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) is amended—

(1) by amending the heading to read as follows:

“UNITED STATES BOARD OF CONTRACT APPEALS”;

(2) by striking out subsections (a), (b), and (c);

(3) in subsection (d)—  
(A) by striking out the first sentence and inserting in lieu thereof the following:

“The United States Board of Contract Appeals shall have jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency relative to a contract made by that agency.”; and

(B) in the second sentence, by striking out “the agency board” and inserting in lieu thereof “the Board”;

(4) in subsection (e), by striking out “An agency board” and inserting in lieu thereof “The United States Board of Contract Appeals”;

(5) in subsection (f), by striking out “each agency board” and inserting in lieu thereof “the United States Board of Contract Appeals”;

(6) in subsection (g)—

(A) in the first sentence of paragraph (1), by striking out “an agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”;

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2);

(7) by striking out subsections (h) and (i); and

(8) by redesignating subsections (d), (e), (f), and (g) (as amended) as subsections (a), (b), (c), and (d), respectively.

(e) Section 9 of the Contract Disputes Act of 1978 (41 U.S.C. 608) is amended—

(1) in subsection (a), by striking out “each agency board” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(2) in subsection (b), by striking out “the agency board” and inserting in lieu thereof “the Board”.

(f) Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended—

(1) in subsection (a)—

(A) in the first sentence of paragraph (1)—  
(i) by striking out “Except as provided in paragraph (2), and in” and inserting in lieu thereof “In”; and

(ii) by striking out “an agency board” and inserting in lieu thereof “the United States Board of Contract Appeals”;

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2), and in that paragraph, by striking out “or (2)”;

(2) in subsection (b), by striking out “any agency board” and “the agency board” and inserting in lieu of each “the Board”;

(3) in subsection (c), by striking out “an agency board” and “the agency board” and inserting in lieu of each “the Board”; and

(4) in subsection (d), by striking out “one or more agency boards” and “or among the agency boards involved” and inserting in lieu of each “the Board”.

(g) Section 11 of the Contract Disputes Act of 1978 (41 U.S.C. 610) is amended—

(1) in the first sentence, by striking out “an agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(2) in the second sentence, by striking out “the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority” and inserting in lieu thereof “the Board”.

(h) Section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) is amended—

(1) in subsection (b), by striking out “an agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(2) in subsection (d)(2), by striking out “by the board of contract appeals for” and inserting in lieu thereof “by the Board from”.

#### **SEC. 884. REFERENCES TO AGENCY BOARDS OF CONTRACT APPEALS.**

Any reference to an agency board of contract appeals in any provision of law or in any rule, regulation, or other paper of the United States shall be treated as referring to the United States Board of Contract Appeals.

#### **SEC. 885. CONFORMING AMENDMENTS.**

(a) **TITLE 5.**—Section 5372a of title 5, United States Code, is amended—

(1) in subsection (a)(1), by striking out “an agency board of contract appeals appointed under section 8 of the Contract Disputes Act of 1978” and inserting in lieu thereof “the United States Board of Contract Appeals”;

(2) in subsection (a)(2), by striking out “an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(3) in subsection (b), by striking out "an appeals board" each place it appears and inserting in lieu thereof "the appeals board".

(b) TITLE 10.—(1) Section 2305(e) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out "subchapter V of chapter 35 of title 31" and inserting in lieu thereof "title IV of the Federal Acquisition Reform Act of 1995"; and

(B) by striking out paragraph (3).

(2) Section 2305(f) of such title is amended—

(A) in paragraph (1), by striking out "in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31" and inserting in lieu thereof "section 424(f)(2) of the Federal Acquisition Reform Act of 1995"; and

(B) in paragraph (2), by striking out "paragraph (1) of section 3554(c) of title 31" and inserting in lieu thereof "section 424(g)(1)(A) of the Federal Acquisition Reform Act of 1995".

(c) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—(1) Section 303B(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(h)) is amended—

(A) in paragraph (1), by striking out "subchapter V of chapter 35 of title 31" and inserting in lieu thereof "title IV of the Federal Acquisition Reform Act of 1995"; and

(B) by striking out paragraph (3).

(2) Section 303B(i) of such Act (41 U.S.C. 253b(i)) is amended—

(A) in paragraph (1), by striking out "in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31" and inserting in lieu thereof "section 424(f)(2) of the Federal Acquisition Reform Act of 1995"; and

(B) in paragraph (2), by striking out "paragraph (1) of section 3554(c) of title 31" and inserting in lieu thereof "section 424(g)(1)(A) of the Federal Acquisition Reform Act of 1995".

#### PART VI—EFFECTIVE DATE; INTERIM APPOINTMENT AND RULES

##### SEC. 891. EFFECTIVE DATE.

This subtitle shall take effect on October 1, 1996.

##### SEC. 892. INTERIM APPOINTMENT.

The Board judge serving as chairman of the board of contract appeals of the General Services Administration on the date of the enactment of this Act shall serve as Chairman during the two-year period beginning on the effective date of this subtitle, unless such individual resigns such position or the position otherwise becomes vacant before the expiration of such period. The authority vested in the President by section 853 shall take effect upon the expiration of such two-year period or on the date such position is vacated, whichever occurs earlier.

##### SEC. 893. INTERIM RULES.

(a) RULES OF PROCEDURE.—Until such date as the Board promulgates rules of procedure, the rules of procedure of the board of contract appeals of the General Services Administration, as in effect on the effective date of this Act, shall be the rules of procedure of the Board.

(b) RULES REGARDING BOARD JUDGES.—Until such date as the Board promulgates rules governing the establishment and maintenance of a register of eligible applicants and the selection of Board judges, the rules of the Armed Services Board of Contract Appeals governing the establishment and maintenance of a register of eligible applicants and the selection of board members shall be the rules of the Board governing the establishment and maintenance of a register of eligible applicants and the selection of Board judges, except that any provisions of the rules of the Armed Services Board of Contract Appeals that authorize any individual other than the chairman of such board to select a Board judge shall have no effect.

#### Subtitle E—Effective Dates and Implementation

##### SEC. 895. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this title shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 896 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) An amendment made by this title shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 896 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be October 1, 1996, or any earlier date that is not within 30 days after the date on which such final regulations are published.

##### SEC. 896. IMPLEMENTING REGULATIONS.

(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this title shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this title may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) SAVINGS PROVISIONS.—(1) Nothing in this title shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 895(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) Except as specifically provided in this title, nothing in this title shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) Except as otherwise provided in this title, a law amended by this title shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, October 1, 1996.

It was decided in the affirmative ..... Yeas ..... 213  
Nays ..... 207

79.7

[Roll No. 371]

AYES—213

Abercrombie	Gephardt	Nadler
Ackerman	Gibbons	Neal
Andrews	Gilchrest	Ney
Baessler	Gilman	Oberstar
Baldacci	Gonzalez	Obey
Barcia	Gordon	Olver
Barrett (WI)	Green	Ortiz
Barton	Gunderson	Orton
Becerra	Gutierrez	Owens
Beilenson	Hall (OH)	Pallone
Bentsen	Hamilton	Pastor
Bereuter	Hastings (FL)	Payne (NJ)
Berman	Hefner	Payne (VA)
Bevill	Hilliard	Pelosi
Bilirakis	Hinchee	Peterson (FL)
Boehlert	Holden	Peterson (MN)
Bonior	Houghton	Pomeroy
Borski	Hoyer	Porter
Boucher	Jackson-Lee	Poshard
Brewster	Jacobs	Rahall
Browder	Jefferson	Reed
Brown (CA)	Johnson (SD)	Reynolds
Brown (FL)	Johnson, E. B.	Richardson
Brown (OH)	Johnston	Riggs
Bryant (TX)	Jones	Rivers
Bunn	Kanjorski	Roberts
Cardin	Kaptur	Roemer
Clay	Kelly	Rose
Clayton	Kennedy (MA)	Roukema
Clement	Kennedy (RI)	Roybal-Allard
Clyburn	Kennelly	Rush
Coleman	Kildee	Sabo
Collins (IL)	Klink	Sanders
Collins (MI)	LaHood	Sawyer
Condit	Lantos	Schroeder
Conyers	Leach	Schumer
Costello	Levin	Scott
Coyne	Lewis (GA)	Serrano
Cramer	Lightfoot	Skaggs
Danner	Lincoln	Slaughter
de la Garza	Lipinski	Spratt
DeFazio	LoBiondo	Stark
DeLauro	Loggren	Stenholm
Dellums	Longley	Stokes
Deutsch	Lowe	Studds
Dingell	Luther	Stupak
Dixon	Maloney	Taylor (MS)
Doggett	Manton	Tejeda
Dooley	Manzullo	Thompson
Doyle	Markey	Thornton
Durbin	Martinez	Thurman
Edwards	Martini	Torres
Ehlers	Mascara	Torricelli
Ehrlich	Matsui	Towns
Engel	McCarthy	Trafigant
Eshoo	McDermott	Tucker
Evans	McHale	Upton
Farr	McKinney	Velazquez
Fattah	McNulty	Vento
Fazio	Meehan	Volkmer
Fields (LA)	Meek	Vucanovich
Filner	Menendez	Ward
Flake	Meyers	Waters
Foglietta	Mfume	Watt (NC)
Forbes	Miller (CA)	Waxman
Ford	Minge	Whitfield
Frank (MA)	Mink	Wise
Franks (NJ)	Moakley	Woolsey
Frost	Mollohan	Wyden
Furse	Montgomery	Wynn
Gejdenson	Morella	Zimmer

NOES—207

Allard	Burr	Crane
Archer	Burton	Crapo
Armey	Buyer	Creameans
Bachus	Callahan	Cubin
Baker (CA)	Calvert	Cunningham
Baker (LA)	Camp	Davis
Ballenger	Canady	Deal
Barr	Castle	DeLay
Barrett (NE)	Chabot	Dickey
Bartlett	Chambliss	Dicks
Bass	Chapman	Doolittle
Bateman	Chenoweth	Dorman
Bilbray	Christensen	Dreier
Bliley	Chrysler	Duncan
Blute	Clinger	Dunn
Boehner	Coble	Emerson
Bonilla	Coburn	English
Bono	Collins (GA)	Ensign
Brownback	Combest	Everett
Bryant (TN)	Cooley	Ewing
Bunning	Cox	Fawell